

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 87617-001

v

Aetna Life Insurance Company
Respondent

**Issued and entered
this 25th day of April 2008
by Ken Ross
Commissioner**

ORDER

I

PROCEDURAL BACKGROUND

On February 5, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On March 11, 2008, the Commissioner accepted the request.

Initially, the Commissioner thought the Petitioner's request for external review was untimely since it must be filed within 60 days after the Petitioner received a final adverse determination at the conclusion of the insurer's internal grievance process as required by Section 2213 of the Insurance Code of 1956, MCL 500.2213. However, after reviewing the material submitted, the Commissioner concluded that Aetna's denial letter of March 30, 2007, was not a final adverse determination that followed the internal grievance process, but was sent in response to the facility's inquiry about coverage.

Inquiries and requests for review from the facility and the Petitioner's parents followed

Aetna's March 30, 2007, letter. However, it does not appear from the record that the Petitioner was afforded the opportunity to avail himself of Aetna's internal grievance process. Then Aetna, in a letter dated December 3, 2007, informed the Petitioner's parents that they had to exhaust Aetna's internal grievance process before they could seek review by an outside reviewer. However, without conducting a grievance, Aetna told the Petitioner in a letter of January 7, 2008, that all his appeal rights had been used. The Commissioner therefore concludes that the Petitioner was not afforded his right to an internal grievance under Section 2213 and treats Aetna's January 7, 2008, letter as its final adverse determination in this matter. The Commissioner also notes that Aetna has not disputed the Petitioner's right to seek an external review by the Commissioner.

This case required an analysis by a health care professional so the Commissioner assigned it to an independent review organization which submitted its recommendation on March 25, 2008.

II FACTUAL BACKGROUND

The Petitioner, born XXXXXXXX XX, 1992, has health care coverage as an eligible dependent under a group policy underwritten by Aetna Life Insurance Company (Aetna).

On March 22, 2007, the Petitioner, 14 years old at the time, was admitted to XXXXX, a facility for mental health and substance abuse services.

Aetna denied coverage for this residential care, saying it was not medically necessary

The Petitioner is requesting coverage for up to the maximum of 30 days of inpatient care allowed for a hospital or treatment facility.

III ISSUE

Was Aetna correct in denying coverage for the Petitioner's residential mental health treatment?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father says that over the years Petitioner has been in therapy with a psychiatrist, attended military school and a wilderness treatment center, and used numerous medications to improve his condition but all were unsuccessful. The Petitioner says his admission to XXXXX was appropriate and medically necessary since he "required 24 hour supervision in a safe and secure environment for his own safety and the safety of others."

Dr. XXXXX of XXXXX, in his March 23, 2007, psychiatric evaluation of the Petitioner, gave his impression and initial diagnosis of the Petitioner:

CLINICAL IMPRESSION

It is felt that [the Petitioner] is a teenage male with a worsening pattern of problems with mood issues, behavioral problems, drug abuse, academic problems, and relationship issues. It is felt that Island View is an appropriate placement for him at this time.

INITIAL DIAGNOSIS

AXIS I: 296.90 MOOD DISORDER, NOS
V61.20 PARENT/CHILD RELATIONAL PROBLEM
312.90 DISRUPTIVE BEHAVIOR DISORDER
305.20 CANNABIS ABUSE
305.30 HALLUCINOGEN ABUSE
314.90 ADHD
AXIS II: DEFERRED, BUT MILD NARCISSISTIC TRAITS NOTED
AXIS III: NONE
AXIS IV: PROBLEMS DUE TO ENVIRONMENTAL STRESSORS
AXIS V: CURRENT G.A.F.: 40
HIGHEST G.A.F. PAST YEAR: 50

An XXXXX representative explained the need for residential care:

Treatment that [the Petitioner] has received at Island View included daily milieu treatment, individual therapy/psychiatric treatment, group therapy, education therapy, and recreational therapy. Discharge planning has been ongoing following Petitioner's admission and includes plans for him to return home to live with his parents following successful completion of treatment at Island View. It is also likely to be recommended that he continue with individual and family therapy along with medication management.

* * *

[I]t is clear that [the Petitioner's] admission to XXXXX was medically necessary and appropriate in an inpatient residential treatment setting....

As documented by his psychiatrist, Dr. XXXXX, safe and adequate care could not be rendered at a less intense level of care during this time. Other alternative levels of care, including years of outpatient therapy and medications, were not successful in alleviating [the Petitioner's] problems and changing his behaviors, evidence that he demonstrated an inability to be managed at lower levels of care.

The Petitioner believes that inpatient residential treatment at XXXXX was medically necessary and believes that Aetna should cover the treatment since there were no alternatives available.

Aetna Life Insurance Company's Argument

Aetna denied coverage because it says the Petitioner did not need the residential level of care. Aetna's policy only covers residential treatment when certain criteria are met. The reasons for Aetna's denial were expressed in its October 17, 2007, letter to XXXXX:

Based upon our review of the information provided, we are upholding the original benefit determination for coverage at a residential level of care for dates of service starting March 22, 2007. Review of the medical chart and correspondence indicates that the [Petitioner] was admitted after more than ten weeks in a wilderness program because of his pattern of oppositionality, impulsivity, drug use and mood instability. He was not reporting suicidal or psychotic thinking; he was cooperative with the treatment program and had family supports. LOCAT criteria support outpatient as the medically necessary level of care. ASAM criteria support intensive outpatient as the medically necessary level of care. This decision was made utilizing Aetna's Level of Care Assessment Tool (LOCAT) and the American Society of Addiction Medicine's Patient Placement Criteria (ASAM).

The policy also includes the following provisions on page 22 of the policy:

General Exclusions Applicable to Health Expense Coverage

Coverage is not provided for the following charges:

- Those for services and supplies not **necessary**, as determined by Aetna, for the diagnosis, care, or treatment of the disease or injury involved. This applies even if they are prescribed, recommended, or approved by the person's attending physician or dentist.

Aetna believes that its denial of the Petitioner's inpatient residential treatment was correct.

Commissioner's Review

The issue in this case is whether the Petitioner meets criteria for coverage of inpatient (or residential) treatment. Under Aetna's policy, inpatient or residential treatment is covered only when specific criteria are met and Aetna has determined that the Petitioner could not have been treated at an outpatient level of care. The Petitioner has argued that the services he requested were medically necessary due to the severe nature of his condition. To resolve this issue, the Commissioner asked for the recommendation of an independent review organization (IRO).

The IRO reviewer is board certified in child and adolescent psychiatry, holds an academic appointment, and has been in practice for more than eight years. The IRO reviewer examined the medical records submitted and concluded that the Petitioner's treatment at the residential treatment level was medically necessary from March 22 through June 19, 2007. The IRO report said:

The MAXIMUS physician consultant noted that prior to this admission, the [Petitioner] was followed by a psychiatrist for almost 2 years and was in weekly therapy. The MAXIMUS physician consultant also noted that the [Petitioner] has been tried on approximately 8 different psychotropic medications without significant improvement. The MAXIMUS physician consultant further noted that the member was enrolled in a military school and a wilderness program without significant improvement in his behavior. The MAXIMUS physician consultant explained that the information submitted for review show that prior to this admission [on March 22, 2007], the [Petitioner] was unstable and could not be safely or effectively treated in an outpatient setting. The MAXIMUS physician consultant also explained that the [Petitioner] has a serious diagnosis, which failed to improve with intensive outpatient treatment. The MAXIMUS physician consultant indicated that the [Petitioner's] symptoms and behavior continued to worsen prior to this admission. The MAXIMUS physician consultant also indicated that it was medically necessary for the [Petitioner] to have been treated at a residential level of care from 3/22/07 through 6/19/07. The MAXIMUS physician consultant noted that records after 6/19/07 were not provided for review.

The Commissioner is not required in all instances to accept the IRO's conclusion. However, the IRO recommendation is afforded deference by the Commissioner. The IRO analysis here is based on extensive experience and professional judgment and the Commissioner can discern no reason why the IRO report should be rejected in this case. Therefore, the Commissioner accepts the IRO conclusion and finds that the residential treatment requested by the Petitioner was

medically necessary.

**V
ORDER**

The Commissioner reverses Aetna Life Insurance Company's adverse determination. Aetna shall cover the Petitioner's residential treatment beginning March 22, 2007, subject to any applicable terms and conditions of the certificate relating to inpatient or residential treatment for mental health services.

Aetna shall provide coverage within 60 days from the date of this Order, and within seven days of providing coverage, shall provide the Commissioner proof it has implemented the Commissioner's Order.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.